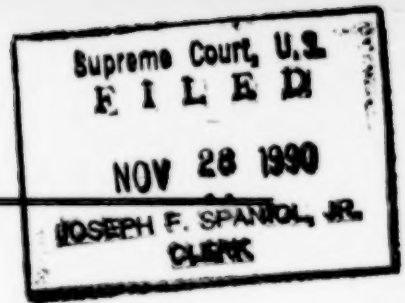


(9)
No. 89-7645



IN THE
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October Term, 1990

DIONISIO HERNANDEZ,

Petitioner,

vs.

NEW YORK,

Respondent.

On Writ of Certiorari to the
Court of Appeals of New York

BRIEF FOR THE MEXICAN AMERICAN
LEGAL DEFENSE AND EDUCATIONAL FUND
AND THE COMMONWEALTH OF PUERTO RICO,
DEPARTMENT OF PUERTO RICAN COMMUNITY
AFFAIRS IN THE UNITED STATES,
AS AMICI CURIAE IN SUPPORT OF PETITIONER

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— — — — —

INTEREST OF AMICI CURIAE

The Mexican American Legal Defense and Educational Fund is a national civil rights organization established in 1967. Its principle objective is to secure, through litigation and education, the civil rights of Hispanics living in the United States.

The Commonwealth of Puerto Rico, Department of Puerto Rican Community Affairs in the United States, is a cabinet level agency of the government of Puerto Rico. Under the laws of Puerto Rico, the department and its secretary, Nydia M. Velazquez, are statutorily authorized to seek intervention in any litigation that affects the civil rights of Puerto Ricans in the United States.

Language discrimination has adversely affected Hispanics in the areas of education, employment, voting rights, as well as a myriad of other areas. The breadth of this discrimination has substantially impeded, and in some instances precluded, Hispanics from the full exercise of constitutional and civil rights. This case represents another example of the continued disparate treatment of Hispanics based upon their linguistic background. For that reason, both of the amici curiae have substantial interest in this case.

The parties have consented to the filing of this brief, which is therefore submitted pursuant to Supreme Court Rule 36.2.

SUMMARY OF ARGUMENT

Scholarly research has led to the publication of a significant body of work about Hispanics. This includes numerous in-depth studies in the areas of demographics and linguistics. Both fields of expertise have closely examined the utilization and maintenance of Spanish, English language acquisition, and the future of Spanish in the United States.

These analyses reveal the resiliency of Spanish in the United States and the growth of Spanish in a bilingual English-Spanish environment. Not surprisingly, the growth of Spanish closely parallels the growth of the Hispanic population.

Spanish has historically been and remains an identifying characteristic of Hispanics: 97% of the individuals who usually speak Spanish are Hispanic; 72% of all Hispanics claim some level of knowledge of Spanish; and 64% of all Hispanics report being bilingual. These figures reveal the concomitant relationship between Spanish and Hispanics.

There is a lay belief that bilinguals can turn off their Spanish language capability and receive information only in English. However, knowledge of Spanish is an immutable characteristic of the bilingual Hispanic individual. Given the pervasive level of English-Spanish bilingualism in the Hispanic community, Spanish represents an immutable characteristic of the Hispanic community on the whole, interwoven into the identity of all Hispanics.

Requiring bilingual Hispanics to allow to the fidelity of testimony translated into English adversely affects the majority of Hispanics by asking them to act in a manner they intuitively know is not possible. Hesitancy reflects an honest pause to an unlawful question. At the root of the prosecutor's strikes lies unlawful bias: bias against Spanish and Hispanics who understand Spanish.

ARGUMENT

This Court has previously addressed language diversity issues, *Lau v. Nichols*, 414 U.S. 563 (1974); *Wy Cong Eng v. Trinidad*, 271 U.S. 500 (1926); and *Meyer v. Nebraska*, 262 U.S. 390 (1923), but has always assumed without squarely addressing the inextricable correlation between the native language of national origin groups and national origin itself which comprise the identifiable characteristic upon which it is impermissible to discriminate. In the case of Hispanics, this country's second largest minority population and largest linguistic minority group, Spanish is the native language at issue.

Whether disparate treatment based upon the linguistic identity of Hispanics equals national origin discrimination is immediately evident from even summary reviews of the historical presence of Spanish in the United States, the nature of bilingualism, and the continued adverse treatment Hispanics are subjected to because they retain their sociolinguistic identity. This brief will address the pervasive nature of English-Spanish bilingualism, the accompanying sociolinguistic evidence, and finally the need to continue the prohibitions against discrimination to include those adverse actions based on language identity.

Dionisio Hernandez is an Hispanic "Puerto Rican" who was tried by a jury whose selection permitted the intentional exclusion of the only two Hispanics eligible to serve. Hernandez was denied the opportunity to be judged by his peers (Hispanics who are English-Spanish bilingual) because some witnesses had been scheduled to testify in Spanish, which an interpreter would then translate into English. The prosecutor utilized two preemptory strikes to ensure a monolingual (English only) jury, which was then totally dependent on the court

interpreter for translation of all testimony in Spanish to English. The Hispanics were eliminated because, when questioned about their ability to listen only to the testimony as translated into English, they did not respond in a manner acceptable to the prosecutor, *i.e.*, they hesitated.

With the qualification that the benefit of a record of the voir dire examination is not available here, it appears that the Hispanic jurors were treated as English-Spanish bilinguals whose proficiency in Spanish was never determined, and whose delay in responding to inquiry about their ability to rely only on the English version of testimony was interpreted in a negative manner by the prosecutor, leading him, as a monolingual, to question their veracity and assume bias on their part. At no time did the trial court address the issue of Spanish or English-Spanish bilingualism as a characteristic of Hispanics, the capacity of bilinguals to turn off their Spanish language capabilities, or the adverse impact on all Hispanics of allowing their linguistic abilities in Spanish, as bilinguals, to be a "neutral" (legitimate, non-discriminatory) basis on which to exercise preemptory strikes.

Demographic analysis and sociolinguistic research demonstrates that the prosecutor was permitted to eliminate the Hispanics in a manner violative of *Batson v. Kentucky*, 476 U.S. 79 (1986). Spanish, an identifying characteristic of Hispanics, singled out two potential jurors to questioning they answered truthfully. The impact of the prosecutor's action is revealed by examining how representative these potential jurors are of all Hispanics. The adverse impact upon Hispanics as a whole in the absence of a neutral, non-discriminatory reason, therefore, demonstrates the discriminatory nature of the prosecutor's action.

I.

**THE DEMOGRAPHIC PICTURE:
HISPANICS ARE A BILINGUAL POPULATION.**

Spanish has always been treated as an identifying characteristic of Hispanics, often singling out individuals and the community as a whole for adverse treatment. The legal challenges and response make up a significant body of the jurisprudence involving Hispanics. *Hernandez v. Texas*, 347 U.S. 475 (1954) (recognizing Spanish surname persons as a group are protected by the Fourteenth Amendment); *United States v. Alcantar*, 897 F.2d 436 (9th Cir. 1990) (reversal and remand for new trial once defendant made out a prima facie showing of discrimination in the selection of jurors, by eliminating fluent Spanish-speaking jurors because tapes of the defendant in Spanish would be introduced as evidence); *Gutierrez v. Municipal Court of Southeast Judicial District*, 838 F.2d 1031 (9th Cir. 1988), vacated on grounds of mootness, ___ U.S. ___, 109 S.Ct. 1736, 104 L.Ed.2d 174 (1989) (striking down an English-only rule); *Zamora v. Local 11, Hotel and Restaurant Union*, 817 F.2d 566 (9th Cir. 1987) (requiring translators at monthly union membership meetings for Spanish-speaking union members); *Olagues v. Russoniello*, 797 F.2d 1511 (9th Cir. 1986), en banc., vacated on grounds of mootness, 484 U.S. 806 (1987) (recognizing that adverse action against Spanish-speaking persons constitutes unconstitutional discrimination on grounds of national origin); *Puerto Rican Organization for Political Action v. Kusper*, 490 F.2d 575 (7th Cir. 1973) (upholding the use of bilingual materials and assistance in voting); *United States ex rel. Negrón v. State of New York*, 434 F.2d 386 (2nd Cir. 1970) (Puerto Rican defendant has a Sixth Amendment right to interpreter in felony criminal trial); *Yniguez v. Mofford*, 730 F.Supp. 309 (D.Ariz. 1990) (State

Constitution provision declaring English to be the official language declared unconstitutional); *Perez v. FBI*, 707 F.Supp 891 (W.D.Tex. 1988) (finding additional terms and conditions of employment applied to Spanish-speaking Hispanic employees constitutes illegal discrimination).¹

In this case, it is important to recognize the significant relationship between Puerto Rico and the United States, and the linguistic characteristics of Puerto Ricans in Puerto Rico and in the United States. In Puerto Rico, although the laws of 1902 reflect that English and Spanish are official languages, see 1 L.P.R.A. §51, Spanish is by far the language of public and private life. Approximately 60% of the residents of Puerto Rico are considered Spanish monolinguals who cannot speak English. *El Mundo*, July 7 1989. Spanish is the medium of instruction in all public schools, although English is required course of study, *New York Times*, Sept. 20 1990, and Spanish, as the national language, is the language used in all commonwealth courts and tribunals, *Pueblo v. Tribunal Superior*, 92 D.P.R. 596 (Sup.Ct. of P.R. 1965).

In 1917, Puerto Ricans became citizens of the United States by operation of the Jones Act, 8 U.S.C. §721, *et seq.* Emigration to the United States from

¹Congress has similarly recognized that remedial statutes intended in whole or in part to rectify historical discrimination and benefit Hispanics must address their linguistic identity. The statutes include the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973, *et seq.* (1988); the Bilingual Education Act of 1968, 20 U.S.C. §§3221-3262 (1982); the Court Interpreters' Act, 28 U.S.C. §1827 (1988); and the Equal Educational Opportunity Act, 20 U.S.C. §1701, 1703(f) (1982).

Puerto Rico in this century has resulted in approximately 2.7 million Puerto Ricans living in the United States today. Linguistically, Puerto Ricans in the United States are neither abandoning their mother tongue, nor resisting English. In New York City, home of the largest Puerto Rican population in this country, 91% of Puerto Ricans still speak Spanish at home, and, simultaneously, 70% of this population speaks English "well" or "very well."

C. Rodriguez, *Puerto Ricans born in the U.S.A.* (1989). See also Appendix A, p. 1. The data for Brooklyn (Kings County), New York, where petitioner was tried, reflects the same trend: 96% of all Hispanics in that borough speak Spanish at home. 1980 Census, General, Social, and Economic Characteristics.

The Puerto Rican experience in the United States, including the maintenance of Spanish and acquisition of English, is similar to that of all Hispanic groups in the United States. In fact, the historical presence, use, and growth of Spanish in the United States parallel the presence and growth of the Hispanic population in the United States. See Appendix B, p. 3.

Spanish language maintenance, immigration, along with population growth, have led Spanish to be "the most widely claimed [non-English] language in the United States, and the only major [non-English language] which over the last two decades has not lost but retained and gained claimants." Solé, *Bilingualism: Stable or Transitional? The Case of Spanish in the United States*, 84 *The Int'l Journal of Social Languages*, p. 36 (1990).

Spanish language claiming encompasses 71.8% of the total Hispanic population. Solé, *supra*, at p. 39. See also Appendix C, p. 4. Hispanics also comprise 97% of the individuals who usually speak Spanish, Estrada, *The*

Extent of Spanish/English Bilingualism in the United States, 2 *Aztlan*, *The Int'l Journal of Chicano Research Studies*, p. 381 (1984); see also Appendix D, p. 5, and 76% of those individuals who report Spanish as a second language. Estrada, *supra*, p. 382. It is estimated that at least 64% of Hispanics are bilingual. Estrada, *supra*, p. 383. See also Macias, *National Language Profile of the Mexican-Origin Population of the United States*, Mexican Americans in Comparative Perspective, (W. Connor, ed.), pp. 285-308 (1985).

While recognition of the inherent Spanish bilingual identity of Hispanics has lagged far behind the reality, growing recognition is inevitable in light of the continued and growing presence of Hispanics and English-Spanish bilingualism. Contrary to the myth that anglicization is or will shift Hispanics towards English monolingualism, English-Spanish bilingualism remains by far the predominant feature of Hispanics. Spanish language use, maintenance, and intergenerational transmission, along with constant immigration, have institutionalized Spanish as a constant element of Hispanic identity and linguistic repertoire. Given that Hispanics are a stable bilingual community, knowledge of Spanish cannot be permitted to be a basis upon which to exclude potential jurors. The burden of such practices would fall squarely on the shoulders of the Hispanic community.

II.

BILINGUALISM: THE SOCIOLINGUISTIC EVIDENCE.

A.

Hispanic Bilingualism in the United States

Hispanic bilinguals are essentially "circumstantial" bilinguals. Valdes, *The Language Situation of Mexican Americans*, Language Diversity: Problem or Resource, pp. 111-139 (1988). See Appendix E, p. 6. They have acquired their second language in a natural context by having to interact with monolingual and bilingual speakers of English in the work, school or neighborhood domains. As might be expected, there are many different types of bilinguals in Hispanic communities. Some individuals are biliterate, while others read and write in only one of their languages. Some individuals are active bilinguals who speak both languages with some ease, while other bilinguals are passive in one of their languages and can only understand but not speak this "weak" language. Valdes, *supra*; Elias-Olivares, *Ways of Speaking in a Chicano Community: A Sociolinguistic Approach*, Dissertation (1976); E. Hernandez-Chavez, *El Lenguaje de los Chicanos* (1975); F. Peñalosa, *Chicano Sociolinguistics* (1975); Sanchez, *Our Linguistic and Social Context*, Spanish in The United States: Sociolinguistic Aspects (1982); R. Sanchez, *Chicano Discourse* (1983). See Appendix F, p. 7. So varied indeed are the different types of English-Spanish bilinguals found in Hispanic communities that it is impossible to conjecture about language strengths or weaknesses based on generation, age, schooling, period of residence in this country, or any other such criteria. There are many first generation Hispanic immigrants who acquire English very rapidly, but there are also many who do not. There are many third and fourth generation Hispanics who are still very

fluent in Spanish, but there are also many such individuals who have only a small degree of understanding of their original ethnic language.

It is clear, however, that large numbers of Hispanics are, to a greater or lesser degree, bilingual. It is equally clear that, because they are bilingual, two languages, English and Spanish, are used in their everyday lives. How they are used and why and what role they play in the community are questions that have been studied at great length by many individuals. Sanchez, *supra* (1982); Peñalosa, *supra* (1975); Valdes, *supra* (1988); Sanchez, *supra* (1983).

Recent work on the alternating use of two languages by Hispanic bilinguals (code-switching) has made clear that both English and Spanish together make up the linguistic repertoire of these speakers. A.E. Fantini, *Language Acquisition of a Bilingual Child: A Sociolinguistic Perspective* (1985); Poplack, *Sometimes I'll Start a Sentence in Spanish y Termino en Español: Toward a Typology of Code-switching*, 18 *Linguistics* (1980); Valdes, *Social Interaction and Code-Switching Patterns: A Case Study of Spanish/English Interaction*, Spanish in the United States: Sociolinguistic Aspects (1982). Hispanic bilinguals, for example, will often switch between languages at the word, phrase, clause, and sentence levels to bring across a series of different types of meanings. A switch to Spanish, for example, by a Hispanic bilingual who is speaking English to another bilingual of the same background, may signal greater solidarity or a reference to values associated with the ethnic language. A switch might also serve, however, as a simple metaphorical device by means of which a speaker gives emphasis to a particular segment of his utterance. G. Valdes-Fallis, *Code-Switching and the*

Classroom Teacher (1979); Zentella, *Code-Switching and Interactions Among Puerto Rican Children*, Spanish in the United States: Sociolinguistic Aspects (1982). What is important is that the use of two languages by Hispanic bilinguals in many informal interactions results in the fact that most members of the community develop the ability to comprehend spoken Spanish.

As is the case with other bilinguals, Hispanic bilinguals are often not conscious of the fact that they are switching languages. Indeed, research shows that when asked to recall the language in which certain information was received, bilinguals have no memory of the input language. They appear to have retained only the information itself. They have not tagged this information in memory according to the language in which it was obtained. Magiste, *The Competing Language Systems of the Multilingual: A Developmental Study of Decoding and Encoding Processes*, 18 *Journal of Verbal and Learning Behavior*, pp. 79-89 (1979). See also Appendix G, p. 9.

Not surprisingly, it is also the case that bilinguals are seldom aware of why they switch languages or where they switch between their languages in speaking to others. Often, they will have no recollection of the fact that they switched, nor will they be able to bring to their level of awareness how they used a particular language switch to bring across particular nuances or meanings. This lack of memory for language used has been attributed to the fact that bilingual individuals are thought to have a common mental storage for both languages. Kolers, *Memory for Words, Synonyms and Translation*, 6 *Human Learning and Memory*, pp. 53-65 (1980); Kolers, *Interlingual Word Association*, 2 *Journal of Verbal Learning and Verbal Behavior*, pp. 291-300

(1983). They do not switch one language on and the other off as they interact with individuals who speak either one or the other of their languages. Both language systems are, instead, constantly switched on. There is no evidence that bilingual individuals of any type have the ability to switch off one of their language systems. Indeed, the only known cases in which one of the languages of a fluent and functioning bilingual is switched "off" are those that involve bilingual aphasiacs (individuals who have suffered brain damage due to a stroke or other such traumatic injury). M. Albert and L. Obler, *The Bilingual Brain* (1975); Paradis, *Bilingualism and Aphasia*, *Studies in Neurolinguistics* (1977); Grosjean, *The Bilingual as a Competent but Specific Speaker-Hearer*, 6 *The Journal of Multilingual and Multicultural Development*, pp. 467-477 (1985). Only in these cases does it occur that an individual cannot access what comes in over one of his language "channels." In all other cases, functioning fluent bilinguals are attending to input which surrounds them. They attend to such input using their two access channels at all times.

B.

Cross-Cultural Communication.

According to John Gumperz, an anthropologist who specializes in the study of cross-cultural communication, "social identity and ethnicity are in large part established and maintained through language"² and communicative behavior. Problems occur in communication when individuals do not share the same communicative conventions and thus misinterpret each other's cues and signals.

²J.J. Gumperz, *Language and Social Identity*, p. 7 (1982).

Accordingly, difficulties arise when individuals of different cultural backgrounds engage in interaction. In Gumperz's words:

When backgrounds differ, meetings can be plagued by misunderstandings, mutual misrepresentations of events and mis-evaluations. It seems that, in intergroup encounters, judgments of performance and of ability that on the whole are quite reliable when people share the same background may tend to break down. (Gumperz, *supra*, p. 2).

Indeed, as T. Kochman underscored in his book *Black and White Styles in Conflict* (1981), even when individuals speak the same language, problems of misinterpretation and misevaluation also occur. In the case of African Americans and Caucasians, for example, it has been found that attempts at communication across groups frequently fail. See also Hansel & Ajirotutu, *Negotiating Interpretations in Interethnic Settings, Language and Social Identity* (1982). Indeed, because the strategies and rules of speaking in these two groups differ so significantly, they often result in distrust and dislike between individuals.

As might be expected, difficulties are magnified when individuals share neither a language nor a culture. Research has provided numerous examples of the types of seemingly trivial differences (e.g., intonation, voice quality) that can cause serious problems in inter-ethnic and cross-cultural communication. J.J. Gumperz and J. Cook-Gumperz, *Introduction: Language and the Communication of Social Identity, Language and Social Identity* (J.J. Gumperz, ed.) (1982); H. Giles, *Language Ethnicity and Intergroup Relations* (1977); H. Giles & P.F.

Poweland, *Speech Style and Social Evaluation* (1975); H. Giles and R. St. Clair, *Language and Social Psychology* (1979). It is clear from this research that individuals bring to a communicative exchange norms of behavior that involve rules for interacting with others and for using both verbal and non-verbal elements in the process of communicating specific meanings. These rules govern, for example, how turns are allocated during a conversation, how far or how close persons stand to each other when talking, when and why eye contact is made, whether silence is permitted during an interaction, and how gestures, voice quality, tone and the like are used to create emphasis. E.T. Hall, *The Silent Language* (1959); Phillips, *Some Sources of Cultural Variability in the Regulation of Talk, 5 Language in Society*, pp. 81-95 (1976); Gumperz, *supra* (1982).

The relevant research makes clear the fact that when communication takes place between persons of different cultural backgrounds, great care must be taken in interpreting behavioral features surrounding the communication. Individuals cannot assume that certain behaviors (e.g., looking away from the speaker, responding "too" quickly or "too" slowly) have a universal or common meaning.

Spanish language retention in a bilingual or monolingual context continues to provoke a negative response. This reaction to language diversity also reflects a bias against Hispanics. Macias, *supra* (1985). This bias was extended in this case and the rationale for striking the Hispanics from the jury because they understood Spanish. Ignorance about linguistics and the extent of bilingualism led the trial court to sanction the prosecutor's conduct as a neutral, non-discriminatory action based on the myths that have historically hurt Hispanics.

III.

THE HISPANIC JUROR: AN ENDANGERED SPECIES.

Hispanics are a bilingual community whose linguistic repertoire includes both English and Spanish. Bilinguals comprise at least 64% of this country's Hispanic population. What future, if any, Hispanic bilinguals have as jurors is dependent on explicit recognition of the relationship between Spanish and the national origin of Hispanics. Unlawful bias against Spanish speakers was displayed by eliminating the only two Hispanics eligible to serve on the jury. Their knowledge of Spanish is not unique among Hispanics, but reflects a common attribute.

Likewise, their hesitancy before responding in a truthful manner reflects their intuitive insight into the impossible nature of the task requested; listen only to the English version of the testimony.

Bilinguals cannot switch English on and Spanish off. Both language systems are constantly switched on. Requiring bilinguals to act otherwise is contrary to human mental processes.

The question of why these Hispanics delayed in responding to the prosecutor's question cannot be resolved by presuming bias on their part or assuming a negative inference. The likelihood of cross-cultural miscommunication between the prosecutor and the Hispanic is as probable as any other explanation. In this context, it is the prosecutor's burden to dispel the inference of discrimination. This burden cannot be shifted, as the state of New York advocates, to the bilingual juror to demonstrate their fidelity to English because they are suspect jurors, *i.e.*, Spanish speakers.

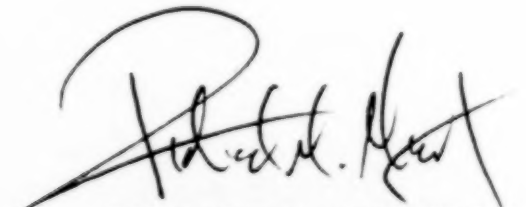
Absent the articulation of a relevant non-discriminatory reason, the inference of discrimination remains. In this case, a neutral, non-discriminatory rationale for striking the Hispanic bilinguals was never articulated.

If the prosecutor had eliminated members of the jury venire who spoke "black English," because he anticipated testimony in "black English," a significant portion of the African American population would be excluded from jury service. The home or community language of Hispanics, or any linguistically diverse population, cannot be allowed to impede their right to equal participation in the jury system. However, absent the court taking affirmative steps to preclude such conduct, the linguistic identity of all bilingual populations will eliminate their participation on juries. *Martin Luther King Elementary School Children et al. v. Ann Harbor District Board*, 473 F.Supp. 1371 (E.D. Mich. 1979).

CONCLUSION

WHEREFORE, *amici curiae* in support of petitioner pray this Honorable Court reverse the decision below as a *per se* violation of the Fourteenth Amendment, or, alternatively, remand this matter to the New York courts to complete the record and provide a full plenary review of the trial court's determination.

RESPECTFULLY SUBMITTED this 28th day of November, 1990.



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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1990

DIONISIO HERNANDEZ,

Petitioner,

vs.

NEW YORK,

Respondent.

On Writ of Certiorari to the
Court of Appeals of New York

APPENDIX TO
BRIEF FOR THE MEXICAN AMERICAN
LEGAL DEFENSE AND EDUCATIONAL FUND
AND THE COMMONWEALTH OF PUERTO RICO,
DEPARTMENT OF PUERTO RICAN COMMUNITY
AFFAIRS IN THE UNITED STATES,
AS AMICI CURIAE IN SUPPORT OF PETITIONER

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App. 1

Appendix A

English ability of the Spanish-origin Population by ancestry for Selected Areas

	Mexican Amer.	Cuban Amer.	Puerto Rican	Other Spanish	Totals
<hr/>					
Arizona					
very well	57.4	52.0	67.4	61.5	57.7
well	24.9	32.0	20.2	25.3	24.9
not well	11.9	16.0	12.4	9.7	11.8
none	5.8	-	-	3.5	5.6
California					
very well	42.9	44.3	58.3	45.2	43.5
well	24.1	23.2	26.1	26.6	24.5
not well	20.1	17.9	11.3	19.0	19.7
none	13.0	14.6	4.3	9.1	12.3
Colorado					
very well	62.6	68.1	65.1	68.5	64.9
well	23.6	21.3	19.8	22.7	23.2
not well	10.7	10.6	13.2	7.5	9.6
none	3.1	-	1.9	1.2	2.4
New Mexico					
very well	60.1	76.5	67.4	66.5	63.3
well	25.5	23.5	19.6	26.2	25.8
not well	9.5	-	13.0	6.2	7.8
none	5.0	-	-	1.1	3.0

App. 2

Texas					
very well	43.4	55.1	61.7	50.6	43.9
well	32.7	21.2	25.9	28.9	32.4
not well	15.5	14.6	9.4	13.2	15.3
none	8.4	9.1	3.0	7.2	8.3
New York					
very well	44.9	43.0	48.2	35.6	43.7
well	24.9	25.3	29.1	27.6	28.4
not well	18.4	21.2	16.4	23.2	19.0
none	11.8	10.5	6.2	13.7	9.0
Florida					
very well	42.5	38.4	52.8	46.5	41.9
well	29.9	21.9	27.6	26.0	23.8
not well	16.9	19.8	14.3	16.9	18.4
none	10.7	19.9	5.3	10.5	15.8
Illinois					
very well	37.6	44.7	46.4	44.1	40.6
well	25.4	24.6	29.8	30.2	26.9
not well	23.2	22.3	17.6	18.7	21.4
none	13.8	8.4	6.2	7.0	11.1
Totals					
very well	44.5	46.3	52.8	46.1	47.5
well	26.4	23.9	27.2	27.4	26.6
not well	18.0	18.8	15.0	17.4	17.1
none	10.8	10.8	4.8	8.9	8.4

Source: U.S. Bureau of the Census (1980, 1983).

App. 3

Appendix B

Gross Growth of Spanish-Speaking Population
in the United States, 1850-1976,
with Projections to 2000¹

Year	Number of Spanish Speakers in Mainland United States	Population of Puerto Rico	Total Number of Spanish Speakers
1850	118,000	...	118,000
1860	170,000	...	170,000
1870	234,000	...	234,000
1880	333,000	...	333,000
1890	423,000	...	423,000
1900	562,000	953,200	1,515,200
1910	448,200	1,118,000	1,566,200
1920	850,800	1,299,800	2,150,600
1940	1,861,400	1,869,300	3,730,700
1960	3,336,000	2,349,500	5,685,500
1970	17,823,600	2,712,000	10,535,600
1976	10,608,900	3,217,000	13,825,900
1980	11,745,400	3,187,600	14,933,000
1985	13,191,300	3,390,700	16,582,000
1990	14,778,900	3,593,800	18,372,700
1995	16,436,600	3,796,900	20,233,500
2000	18,145,200	4,000,000	22,145,200

¹Source: R.F. Macias, "Language Diversity among U.S. Hispanics: Some Background Considerations for Schooling and Non-Biased Assessment," in J. Speilberg, ed., *Proceedings--Invitational Symposium on Hispanic American Diversity* (East Lansing, Mich.: Michigan State University and Michigan State Department of Education, 1982), pp. 110-36.

Appendix C
Language of the Spanish-origin Population
by ancestry for selected areas (%)

	Mexican American		Puerto Rican		Cuban		Other Spanish		Totals	
	SP	EN	SP	EN	SP	EN	SP	EN	SP	EN
Arizona	71.9	19.6	58.1	32.6	58.0	36.7	48.7	39.6	69.6	21.6
California	69.1	22.4	60.8	31.9	85.3	11.1	52.5	36.0	66.9	25.3
Colorado	47.3	44.0	47.3	44.1	65.2	23.2	44.3	48.6	51.0	39.9
New Mexico	73.4	18.6	55.6	37.0	55.2	37.9	68.2	25.1	70.6	22.0
Texas	82.6	9.8	67.9	22.1	81.1	13.7	65.4	25.6	81.4	11.0
New York	43.8	45.1	82.3	10.5	84.2	12.1	+76.9	13.6	+79.6	12.5
Florida	57.2	33.9	+78.7	14.8	93.3	3.6	+69.0	22.2	+82.8	11.9
Illinois	71.6	19.4	82.9	8.4	82.2	11.2	58.2	27.2	72.6	17.9
Totals	64.6	26.6	66.7	25.1	75.6	18.7	60.4	29.7	71.8	20.5

Source: U.S. Bureau of the Census (1980, 1983).

Appendix D

Languages Usually Spoken by Persons
4 Years Old and Over, July 1975

Usual Language of Person	Total Persons 4 Years Old and Over	Spanish Origin Persons		
		Number	Col. %	Row %
Total	196,795,910	9,437,770	100.0	4.8
English	188,798,830	5,277,939	55.9	2.8
French	269,897	0	.0	.0
German	131,511	1,780	.0	1.4
Greek	124,497	0	.0	.0
Italian	466,782	1,609	.0	.0
Portuguese	109,907	21,011	.2	19.1
Spanish	4,026,782	3,919,034	41.5	97.3
Chinese	280,210	0	.0	.0
Filipino	111,624	4,654	.0	.0
Japanese	111,430	0	.0	.0
Korean	90,395	0	.0	.0
Other	812,103	19,230	.2	2.4
N.R.	1,477,126	192,513	2.0	13.0

Source: 15 Aztlan International Journal of Chicano Studies Research, p. 381 (1984).

Appendix E

Elective Bilingualism versus Natural Bilingualism

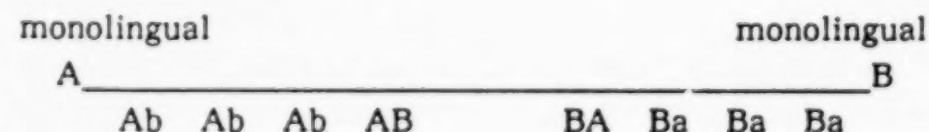
Bilingualism as an individual phenomenon develops under two different kinds of circumstances. On the other hand, an individual may consciously decide to acquire another language and to pursue the study or learning of this language in either formal (classroom) or informal (actual communicative) contexts. This type of conscious, voluntary bilingualism has been referred to as "elective" bilingualism. Persons who study foreign languages and who then seek out contacts with speakers of these languages either abroad or in this country can be said to be elective or elite bilinguals. H. Baetens-Beardsmore, *Bilingualism: Basic Principles* (1982).

On the other hand, "circumstantial" or natural bilingualism occurs when individuals find that their first language (L1) will not suffice to meet all of their communicative needs. In order to participate fully (or simply to survive) in the context in which they find themselves, it becomes necessary to them to acquire a second language (L2) and to use this language in their everyday lives. Circumstantial bilingualism is a characteristic of immigrant groups who must learn to use the original national language. R. Appel and P. Muysken, *Language Contact and Bilingualism* (1987); J.F. Hamers and M.H.A. Blanc, *Bilinguality and Bilingualism* (1989); Valdes, *The Language Situation of Mexican Americans, Language Diversity: Problem or resource*, p. 111-139 (1988); J. Grosjean, *Life with Two Languages* (1982).

Appendix F

The Bilingual Individual

The term "bilingual" as used here, refers to an individual who has "more than one competence," that is, who can function to some degree in more than one language. When one uses this broad definition of bilingualism, one includes into the company of bilinguals all individuals who have either receptive or productive skills, to whatever degree, in more than one language. Grosjean, *supra* (1982); K. Hakuta, *Mirror of Language: The Debate on Bilingualism* (1985); Baetens-Beardsmore, *supra* (1982); Appel and Muysken, *supra* (1987); Hamers and Blanc, *supra* (1989). For example, one classified as bilingual an individual who is a native speaker of English and who can read French, but does not speak or understand the spoken French language. Such an individual is said to have receptive skills in written French and to significantly differ from those persons who have zero skills in a second language. According to this perspective, a bilingual individual is not necessarily an ambilingual (two native speakers in one), but a bilingual of a specific type who along with other bilinguals of many different types can be classified along a continuum. Different types of individuals (all bilingual in language A and language B) might be classified with relation to each other as illustrated in Figure 1. Valdes, *supra* (1988).



The broad definition of bilingualism used here also rejects the popular notion of a true bilingual, an individual who is equally capable in two language, as unrealistic. In order for a bilingual to be equally proficient in both of his/her languages, she would have to balance every experience encountered or carried out in one language with an equivalent experience in the other language. Appel and Muysken, *supra* (1987); Baetens-Beardsmore, *supra* (1982); Fishman, *Who Speaks What Language to Whom and When?* 2 *La Linguistique*, pp. 67-68 (1965); U. Weinrich, *Languages in Contact* (1974). Since this seldom occurs in circumstantial settings, most bilingual individuals' skills vary over a lifetime. Bilinguals may begin, for example, by being dominant in one language, and yet find that their dominance changes over time. Such changes in dominance or relative proficiency will directly reflect the ways in which bilingual persons have used their two languages, the frequency of their interaction with other speakers of each language, the contexts in which the languages are used, etc.

APPENDIX G

There is a great body of evidence supporting the view that both English and Spanish are perceived as necessary for everyday interaction in the Hispanic community. The following sources are available as supporting evidence in the matters of bilingualism and code-switching.

For additional research on bilingualism itself, K. Diller discusses the facets of bilingualism in "*Compound*" and "*Coordinate*" *Bilingualism: A Conceptual Strategy*, 26 *Word*, pp. 254-261. S. Dornic has written books and articles on the topic, including *Information Processing and Bilingualism* (1977), *The Bilingual's Performance: Language Dominance, Stress, and Individual Differences*, *Language Interpretation and Communication* (1978), and *Information Processing in Bilinguals: Some Selected Issues*, 40 *Psychological Research*. Genesee, Hamers, Lambert, Mononen, Seltz and Stark produced an article on language processing in bilinguals which was published in *Brain and Language*, Volume 5. M. and Y. Lopez published *The Linguistic Interdependence of Bilinguals*, in the *Journal of Experimental Psychology*. D.E. Lopez discussed Chicano language loyalty in an urban setting in *Sociology and Social Research*.

For information on the way children acquire bilingualism within the family unit, please see Laosa, *Bilingualism in Three United States Hispanic Groups: Contextual Use of Language by Children and Adults in their Families*, 67 *Journal of Educational Psychology*; Lindholm, *Language Mixing in Bilingual Children*, 5 *Journal of Child Language* (1978).

Further readings on the multiple use of Spanish and English within the community, and maintenance of the native language, include Floyd, *Spanish in the Southwest: Spanish Maintenance or Shift?*, Spanish Language Use and Public Life in the United States (1985); Galvan, *Marble Terminology in a Bilingual South Texas Community: A Sociolinguistic Perspective on Language Change*, Spanish in the United States, Sociolinguistic Aspects (1982); Limon, *El Meeting: History, Told Spanish, and Ethnic Nationalism in a Chicano Student Community*, Spanish in the United States: Sociolinguistic Aspects (1982); Ortiz, *A Sociolinguistic Study of Language Maintenance in the Northern New Mexico Community of Arroyo Seco* (1975); Pedraza, *Language Maintenance among New York Puerto Ricans*, Spanish Language Use and Public Life in the United States (1985); Sawyer, *Spanish-English Bilingualism in San Antonio, Texas*, *El Lenguaje de los Chicanos: Regional and Social Characteristics of Languages Used by Mexican Americans* (1975).

For in-depth information on code-switching, please consult the following authors. Piaff, *Constraints on Language Mixing*, 55 *Language* (1979); Slobin, *Texas Spanish and Lexical Borrowing*, Spanish in the United States: Sociolinguistic Aspects (1982); Lavandera, *Lo Quebramos, But Only in Performance*, Latino Language and Communicative Behavior (1981); Poplack, *Syntactic Structure and Social Function of Code-Switching*, Latino Language and Communicative Behavior (1981); Valdes, *Code-Switching and Language Dominance: Some Initial Findings*, 18 *General Linguistics*; Valdes, *Code-Switching as a Deliberate Verbal Strategy: A Microanalysis of Direct and Indirect Requests Among Bilingual Chicano*

Speakers, Latino Language and Communicative Behavior (1981).

For articles pertaining to the classroom and how bilinguals are treated in the educational system, please read these books. Zentella, *Ta Bien, You Could Answer Me En Qualquer Idioma: Puerto Rican Code-Switching in Bilingual Classrooms*, Latino Language and Communicative Behavior (1981); McClure, *Formal and Functional Aspects of the Code-switched Discourse of Bilingual Children*, Latino Language and Communicative Behavior (1981).